

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

MISAEEL MENDEZ,
Plaintiffs,

v.

BERRY GLOBAL INC.,
Defendants.

Civil Action No. 7:22-CV-115 (HL)

ORDER

Here before the Court is Defendant's Motion to Dismiss for Lack of Prosecution (Doc. 17). Plaintiff Misael Mendez brought this action against Defendant Berry Global Inc. on October 24, 2022. The Scheduling and Discovery Order was entered by the Court establishing a deadline for Discovery for June 19, 2023 (Doc. 12). After being unable to reach their client for some time, Plaintiff's Counsel filed a Motion to Withdraw as Counsel on April 21, 2023 (Doc. 15). This Court granted the Motion on June 21, 2023 (Doc. 16). Since granting the motion to withdraw, Defendant has continued to be unable to contact Plaintiff including discovery and deposition requests. A Motion Hearing was held before the Court on September 19, 2023. The Plaintiff was not in attendance. No one has heard from Plaintiff since February 2023.

The Federal Rules of Civil Procedure states "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." *FRCP Rule 41(a)*. To dismiss a complaint under

Rule 41(b) “a district court must find: (1) a clear record of delay or willful contempt; and (2) that lesser sanctions would not suffice.” *Haji v. NCR Corp.*, 834 F. App'x 562, 563 (11th Cir. 2020). Dismissal under Rule 41 is an extraordinary remedy to be “used in the most extreme cases.” *Id.* However, a “dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989).

This Court issued an Order Granting the Motion to Withdraw as Counsel on June 21, 2023 (Doc. 16). In that Order, the Court reminded Plaintiff that it has responsibility to either retain new counsel or to otherwise respond to any future filings or prepare for trial. Plaintiff was warned that failure to do so may result in adverse consequences, including dismissal of his lawsuit. Additionally, Plaintiff has not provided Defendant with any Discovery Responses nor made himself available for a Deposition. The deadline to complete Discovery was June 19, 2023 and the deadline for dispositive motions were due by July 19, 2023. Plaintiff was mailed notice of the September 19, 2023, Motion Hearing before this Court. No one has heard from the Plaintiff.

Accordingly, for the reasons stated, Defendant’s Motion to Dismiss (Doc. 17) pursuant to Fed. R. Civ. P. 41(b) for lack of prosecution is **GRANTED**. It is hereby **ORDERED** that Plaintiff’s Complaint is **DISMISSED**.

SO ORDERED this 25th day of September, 2023.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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